

ALD-266

July 31, 2008

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. **08-2398**

JARID L. CUBBAGE

VS.

WARDEN PERRY PHELPS, et al.

(D. Del. Civ. No. 05-cv-00798)

Present: SLOVITER, FISHER AND HARDIMAN, Circuit Judges

Submitted is appellant's request for a certificate of appealability under 28 U.S.C. § 2253(c)(1) in the above captioned case.

Respectfully,

Clerk

MMW/AF/isc/jw

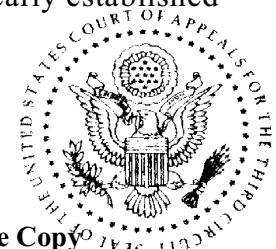
O R D E R

The request for a certificate of appealability is denied. Jurists of reason would not debate that the District Court properly dismissed Appellant's first four claims as procedurally barred. See Slack v. McDaniel, 529 U.S. 473, 484 (2000); see also Coleman v. Thompson, 501 U.S. 722, 729-30 (1991). Appellant has failed to provide sufficient basis to justify the default by demonstrating either cause and prejudice or a fundamental miscarriage of justice. See Coleman, 501 U.S. at 749-50. Finally, Appellant failed to show that the state court's determinations regarding his ineffective assistance of counsel claims were contrary to, or involved an unreasonable application of, clearly established Federal law. See 28 U.S.C. § 2254(d)(2).

By the Court,

/s/ Thomas M. Hardiman
Circuit Judge

A True Copy



Marcia M. Waldron

Marcia M. Waldron, Clerk

Certified order issued in lieu of mandate.

Dated: August 11, 2008

ISC/cc: Jarid L. Cubbage

Thomas E. Brown, Esq.